**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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| **North Shore Gas Company** | ) | |
| **The Peoples Gas Light and Coke Company** | ) | |
| | ) | Docket No. 13-0550 |
| Petition pursuant to Section 8-104 of the | ) | |
| Public Utilities Act To Submit an Energy Efficiency Plan | ) | |

**STATEMENT OF POSITION OF**

**THE PEOPLE OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS
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**STATEMENT OF POSITION OF**
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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("the People" or "AG"), pursuant to the schedule established by the Administrative Law Judge ("ALJ"), hereby file their Statement of Position in the above-captioned proceeding.

## I. INTRODUCTION

The General Assembly has declared that it "is the policy of the State that electric and natural utilities are required to use cost-effective energy efficiency and demand-response measures to both reduce delivery load and reduce both the direct and indirect costs of gas and electric utility service. 220 ILCS 5/8-103(a), 8-104(a). Every three years, electric and gas utilities must present to the Commission a proposed plan for providing to utility ratepayers comprehensive and cost-effective energy efficiency programs. 220 ILCS 5/8-103(f), 8-104(f).

Peoples Gas Light & Coke Company and North Shore Gas Company ("the Utilities", "the Companies" of "PGL/NS") are affiliated gas distribution utilities, serving customers throughout the City of Chicago and northern suburbs, respectively. The Companies, therefore, are required under Section 8-104 of the Public Utilities Act ("the Act") to delivery energy efficiency programs to their residential, commercial and industrial customers. 220 ILCS 5/8-104. This proceeding involves the Illinois Commerce Commission's ("Commission") review of the Companies' proposed plan for the delivery of energy efficiency programs to PGL and NS customers for electric program years 4 through 6 under Section 8-104(f) of the Act, which requires gas utilities to file an energy efficiency plan every three years with the Commission.[1]

The Companies offer a Plan 2 with significantly reduced savings goals than that authorized by Section 8-104 of the Act due to the impact of the 2% cost cap in Section 8-104(d) of the Public Utilities Act ("the Act"). As such, the People and other stakeholders have offered modifications to the Companies' Plan under Section 8-104(f) that seek to ensure that the

[1] Under Section 8-104(e) of the Act, gas utilities shall implement 75% of the energy efficiency measures approved by the Commission, with the remaining 25% of those energy efficiency measures approved by the Commission implemented by the Department of Commerce and Economic Opportunity ("DCEO"). A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures. DCEO's proposed programs were examined by the Commission in ICC Docket No. 13-0499.

maximum amount of energy savings can be achieved with the cost cap benchmark. The Commission's final order should require the Companies to reflect a similar emphasis in maximizing energy savings in its revised Plan.

In addition, the People note that *ratepayer* -- not shareholder -- interests must prevail in the resolution of the issues in this case, given the General Assembly's mandate that required the Companies "to use cost-effective energy efficiency to reduce direct and indirect costs to consumers." 220 ILCS 5/8-104(a). While the Act permits the Companies to recover the costs of delivering prudently delivered cost-effective programs from ratepayers, it did not intend to insulate the Companies from any risk of recovering those expenses or achieving the savings goals. Specific penalty provisions are included in the Act to both incite and ensure best practices in the delivery of the efficiency programs. *See* 220 ILCS 5/8-104(i).

While some issues that arose during the Commission Staff's and Intervenor review of the PGL/NS plan have been resolved, others remain contested and in need of Commission resolution in this proceeding. Among those are issues addressing the need for the Commission to ensure that the *maximum* amount of cost-effective energy savings are achieved – not simply a minimum amount designed to insulate the Companies from penalties under Section 8-104(i) of the Act. Certain PGL/NS proposals related to its program content, and requests to reduce calculated savings goals by changes in Net to Gross ("NTG") and Technical Resource Manual ("TRM") evaluations of program measures and permit unlimited flexibility in shifting programs budgets undermine the General Assembly's goal of achieving maximum natural gas energy savings. The Commission's goal in this docket is to enter an order that achieves the appropriate balance of (1) providing the Companies with the necessary certainty to allow it to create robust programs that achieve maximum energy savings over the long term, and (2) ensuring that not all risk of financial penalty is removed, which has the deleterious effect of allowing a utility to put programs on autopilot at the expense of needed program modifications.

In their Briefs, the People addressed the following significant topics, among other contested and resolved issues:

> 1. **Programs, Goals and Budgets:** The Companies have proposed a portfolio of programs that would expend the available budget over the three year period, but would dramatically reduce goals from the statutory targets of 0.8%, 1.0% and 1.2% of gas sales for program years 4-6. The Companies claim the original goals articulated in the statute are unachievable given the budget limits. As discussed below, while program goals must be modified downward because of the budget limits, AG witness Philip Mosenthal[2] expressed concerns related to the

[2] AG witness Philip Mosenthal has more than 30 years of experience in all aspects of energy efficiency, including facility energy management, policy development and research, integrated resource planning, cost-benefit analysis, and efficiency and renewable program design, implementation and evaluation. Mr. Mosenthal has developed numerous utility efficiency plans, and designed and evaluated utility and non-utility residential, commercial and industrial energy efficiency programs throughout North America, Europe and China.

Mr. Mosenthal has also completed or directed numerous studies of efficiency potential and economics in many locations, including China, Colorado, Delaware, Kansas, Maine, Massachusetts, Michigan, New England, New Jersey, New York, Quebec, Texas, and Vermont. These studies ranged from high level assessments to extremely detailed, bottom-up assessments evaluating thousands of measures among numerous market segments. A current example of the latter is an ongoing project to analyze the electric, natural gas and petroleum efficiency and renewable energy potential for New York State, on behalf of the New York State Energy Research and Development Authority (NYSERDA).

specific program designs the Companies propose, as well as the measures being promoted. In general, his concerns relate to a lack of comprehensiveness in some programs, significant promotion of some measures that the Companies estimate will not even be close to being cost-effective, and failure to optimally integrate some services with its electric counterparts -- Commonwealth Edison and the Illinois Power Authority.

2. **Flexibility:** The Companies are proposing complete flexibility to modify their Plan 2 unilaterally throughout the Plan period. In addition, it appears the Companies would like this flexibility without any obligation to also adjust savings goals based on shifts between programs and budgets. Because of the significant variation in costs per unit savings among the various programs, this unlimited flexibility would provide the Companies the ability to simply shift funds from more expensive programs to less expensive ones, thereby easily meeting goals that were established assuming more resources were devoted to the expensive programs. This offers the Companies an unreasonable ability to meet their goals without following their intended plan and undermines the purpose of establishing and approving a plan in the first place.

While the OAG supports program administrator flexibility to respond to market changes and undertake midcourse corrections as appropriate, some limits on this flexibility and a mechanism to adjust goals accordingly for any shifts in expenditures beyond those limits must be ordered. The OAG also proposes that any shifts be presented to and discussed among SAG members prior to adoption.

3. **Net-To-Gross Estimation and Goal Adjustments Based on Net-To-Gross or Technical Reference Manual Changes:** The Companies propose a modification of the ICC-approved Net-to-Gross ("NTG") framework, despite the fact that the SAG has made great progress and is very close to a reasonable consensus on a new NTG framework that could be adopted by all Illinois program administrators. The Commission should adopt a modified version of the Companies' NTG proposal that would resolve most of the Companies' concerns about certainty while providing a formalized and consistent approach throughout Illinois that benefits from the consensus of all parties. The OAG encourages the ICC to either adopt this framework in each of the program administrators Plan 3 dockets, or alternatively, to direct the SAG to finalize its work on establishing a new modified common NTG framework for all program administrators and file it with the ICC by a date certain.

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Mr. Mosenthal currently is a lead advisor for business energy services in Rhode Island and Massachusetts on behalf of the Energy Efficiency Resource Management Council and the Energy Efficiency Advisory Council, respectively, overseeing and advising on utility program administrators plans, program designs, implementation and performance in those states.

He has been actively engaged in the Illinois Stakeholder Advisory Group (SAG) since its inception, representing the People of the State of Illinois. Prior to co-founding Optimal Energy in 1996, Mr. Mosenthal was the Chief Consultant for the Mid-Atlantic Region for XENERGY, INC. (now DNV-KEMA). Mr. Mosenthal has a *B.A.* in Architecture and an *M.S.* in Energy Management and Policy, both from the University of Pennsylvania.

The Companies also propose adjusting goals based on changes in either planned NTG values or changes to the Technical Reference Manual ("TRM") during the Plan period. The OAG strongly opposes the proposal, which if adopted would eliminate any incentive for the Companies to make needed modifications to program measures during the life of the Plan.

5. **SAG Participation.** The OAG requests that the Commission order ComEd to continue participating in the joint electric/gas statewide SAG, in order to continue to collaborate with stakeholders on important program design and evaluation parameters, and participate in the creation of a needed Statewide Energy Efficiency Policy Manual.

The People urge the Commission to order ComEd to refile its three-year energy efficiency plan ("the Plan") under Section 8-104(f) and modify its portfolio offerings and savings goals consistent with the recommendations described in their Initial and Reply Briefs.

## II. STATUTORY FRAMEWORK

Several established statutory principles must guide the Commission's evaluation of the Companies' proposed PY 4-6 energy efficiency plan ("Plan"). First and foremost is the recognition that proposed programs must be cost-effective. As used in these sections, "cost-effective" means that the measures satisfy the Total Resource Cost test.[3] The Total Resource Cost test or "TRC" means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. Importantly, the benefit-cost ratio is the ratio of the *net* present value of the total benefits of the program to the *net* present value of the total costs as calculated over the lifetime of the measures. *Id.*

When evaluating a utility's energy efficiency programs, the Commission's analysis of cost-effectiveness shall be applied at the portfolio level, as established by both the Public Utilities Act and reinforced by the Commission in multiple prior dockets. *See* 220 ILCS 5/8-104(f) (the utility shall "[d]emonstrate that its *overall* portfolio of energy efficiency and demand-response measures, not including (low-income)programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.") (emphasis added); ICC Docket 10-0564, Order of May 24, 2012 at 92; ICC Docket No. 07-0539,

[3] "Cost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases. 220 ILCS 5/8-104(b).

Order of February 6, 2008 at 21; ICC Docket No. 10-0568, Order of December 21, 2012 at 30; ICC Docket No. 11-0341, Order of October 2, 2013 at 49.

Under Section 8-104 of the Act, gas utilities are required to implement cost-effective energy efficiency measures to reduce the amount of energy utilized by their retail customers in accordance with annual incremental annual energy savings goals specified in the statute. That subsection provides that gas utilities shall implement energy efficiency programs that achieve the following annual energy savings levels for the program years 2014 -- 2016:

> (4) an additional 0.8% by May 31, 2015, increasing total savings to 2.0%;
>
> (5) an additional 1% by May 31, 2016, increasing total savings to 3.0%;
>
> (6) an additional 1.2% by May 31, 2017, increasing total savings to 4.2%;
>
> (7) an additional 1.4% by May 31, 2018, increasing total savings to 5.6%;
>
> (8) an additional 1.5% by May 31, 2019, increasing total savings to 7.1%; and
>
> (9) an additional 1.5% in each 12-month period thereafter.

220 ILCS 5/8-104(c). Gas utilities may comply with this subsection (c) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year. *Id.*

Notwithstanding the requirements of subsections (c) of this Section, a statutory cost cap provision provides that a gas utility shall reduce the amount of energy efficiency implemented over a three-year planning period by an amount necessary to limit the estimated average annual increase in the amounts paid by retail customers in connection with gas service due to no more than 2% in the applicable three-year reporting period. 220 ILCS 5/8-104(d)[4].

In submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted in Section 8-104 of the Act, the Companies must:

> (1) Demonstrate that their proposed energy efficiency measures will achieve the requirements that are identified in subsection (c) of this Section, as modified by subsection (d);
>
> (2) Present specific proposals to implement new building and appliance standards that have been placed into effect;

[4] For purposes of calculating a cost cap, as defined in sections 8-103(d) and 8-104(d), the total amount paid for electric and gas service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes. *Id.*

> (3) Present estimates of the total amount paid for gas service expressed on a per therm basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsections (d);
>
> (4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.
>
> (5) Demonstrate that its overall portfolio of energy efficiency measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.
>
> (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.
>
> (7) Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and Department's portfolios of measures and broader net program impacts and, to the extent practical, for adjustment of the measures on a going forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given 3-year period.

220 ILCS 5/8-104(f). In addition, not more than 3% of energy efficiency program revenue may be allocated for demonstration of breakthrough equipment and devices. 220 ILCS 5/8-103(g).

The Companies are seeking approval of significantly reduced energy savings goals over the PY 4-6 time period, in part due to the cost cap, and in part due to a failure to leverage existing electric programs so that similar gas programs can be offered jointly, as well as unjustified and unreasonable requests to minimize the Utilities' risk in achieving annual savings goals, as discussed further below.

## III. PROGRAMS, GOALS AND BUDGETS

The People note that, in their Plan 2, the Companies are by and large carrying over the existing programs from their first Triennial Plan. The Companies argue that the statutory budget caps found in Section 8-104(d) (220 ILCS 5/8-104(d)) will prevent them from meeting the unmodified statutory targets of 0.8%, 1.0% and 1.2% of gas sales. NS-PGL Ex. 1.0 at 4. While the People agree that the statutory budget caps may act to constrain the Companies' ability to meet unmodified goals, AG witness Philip Mosenthal nonetheless found that the overall cost per unit of savings from these programs seems reasonable, both in comparison to actual results available so far from the first plan as well as from typical metrics from programs outside of Illinois. AG Ex. 1.0 at 8.

The People raise a number of issues with the Companies' proposed programs, including:

- A lack of comprehensiveness and the ability to engage customers in a "one-stop-shop" experience in the Residential Single Family program;
- The Companies' failure to include comprehensive blower-door guided air sealing services similar to those that Nicor and ComEd will be pursuing in their joint program;
- Limited coordination with ComEd and engagement with Commercial & Industrial ("C&I") new construction projects;
- Use of direct installation in the core Business Existing Facilities program, and limitations on comprehensiveness in the Small Business Efficiency program;
- Limited use of on-bill financing that could provide the Companies with greater ability to leverage limited efficiency funding;
- Promotion of non-cost-effective measures.

AG Ex. 1.0 at 8. As discussed in their Briefs, the People urge the Commission to enter a final Order in this docket that orders the Company to file a modified Plan, pursuant to Section 8-104(f) of the Act, consistent with the recommendations below.

### A. Residential Programs

#### 1. The Companies' Residential Single Family Program

The People reviewed the Companies' Residential Single Family Program, which includes two "paths" labeled "Home Energy Jump Start" and "Home Energy Rebate." The Home Energy Jump Start is a program wherein a contractor will come to a customer's home and install a number of low cost energy-saving items such as faucet aerators, showerheads, programmable thermostats, and pipe insulation. The contractor will also complete a "high level assessment to identify other energy saving opportunities."[5] The Plan also envisions the contractor educating the customer on the various financial incentives available through which the customer could pursue those identified "other energy saving opportunities."[6] These would presumably include the prescriptive rebates available under the Home Energy Rebate path of the Plan.

The People noted the twofold concern that AG witness Mosenthal had with the Companies' planned approach to their residential single family program. First, the contractor's direct installation ignores air and duct sealing – a measure that Mr. Mosenthal views as "generally the most important savings opportunities in the home." AG IB at 10; AG Ex. 1.0 at 9.

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[5] NS/PGL Plan 2 at 33.

[6] *Id.*

Second, the Companies' program does not provide consumers with a "one-stop-shop," and the program design is not such that it could maximize energy savings opportunities for the customer by allowing them to agree to approve installation of additional savings measures or receive direct referrals to obtain them.

It appears that the Companies have addressed the People's concerns (and those similarly raised by CUB/City) about adopting an air sealing program, albeit reluctantly. The Companies now agree to "adopt such a measure for its residential and multi-family energy efficiency programs, with or without radon testing *as directed by the Commission*" and "[i]f ordered by the Commission, the Utilities would be able to implement such a measure within the context of a compliance filing to update their Plan 2." NS/PGL IB at 16-17. As the Companies acknowledge, their previous concerns as to the cost-effectiveness of this program are no longer valid. A recalculation by the Companies revealed that air sealing, either with or without radon testing, can be cost-effective. NS/PGL IB at 17; *see* CUB/City Cross Ex. 1. The People, therefore, urge the Commission to order the Companies to adopt an air sealing program as part of its residential and multi-family energy efficiency program.

As noted in the People's Initial Brief, if the Commission is unwilling to direct the Companies to implement this program in a similar fashion to the other program administrators in Illinois, i.e. without the added testing, the People urge the Commission to still order the Companies to pursue this measure under a pilot approach to obtain data on the prevalence and levels of radon. AG IB at 14. This will allow the Companies to obtain data on the prevalence and levels of radon. Mr. Mosenthal also notes that some of the radon testing should be performed in the wintertime, the season where the impact of any possible increase in radon should be greatest. *Id.*

For all of these reasons, the People encourage the Commission to direct the Companies to add air sealing to the Residential Single Family Program, or, alternatively, engage in a six-month pilot that includes radon testing for a limited time to collect sufficient data to determine if the testing should continue.

The People note, however, that the Companies do not appear to satisfactorily address the People's recommended program design features that have been adopted by other utilities in Illinois which seek to make the Companies' proposal more of a "one stop shop" for residential customers. AG IB at 9-10. While the People applaud the Companies' plan to jointly offer this program with ComEd, because both electric and gas efficiency opportunities can be simultaneously pursued and cost savings will arise from combining efforts, the People noted that both ComEd and Nicor plan to offer a far more streamlined and comprehensive service than the program proposed by the Companies in this docket.[7] Specifically, ComEd and Nicor plan a "whole house approach to energy efficiency," including air sealing services.[8] In addition, "if the customer chooses to move forward with the weatherization work recommended the contractor will facilitate scheduling and installation of measures during a subsequent visit."[9] Finally, the contactor will apply the 50% incentive as an "instant rebate to the customer's invoice," thus negating the need for the customer to pay the full cost and later get reimbursed through a rebate path. This stands in stark contrast with the program planned by the Companies, which merely

[7] Docket No. 13-0495, Commonwealth Edison 2014-2016 Energy Efficiency and Demand Response Plan, ComEd Ex. 1.0 at 48.

[8] *Id.*

[9] *Id.*

include a "high level assessment," and much less of a comprehensive "one stop shop" than that offered in Nicor territory. AG IB at 9-10; AG Ex. 1.0 at 10.

It remains unclear to the People why the Companies chose a more "high-level" approach while ComEd has indicated that it can – and will – support the more comprehensive approach. AG IB at 11; AG Ex. 2.0 at 22. CUB/City witnesses Devens and Francisco also raise similar concerns.[10] Given that the Companies have not sufficiently explained the reasons for their planned approach, the People urge the Commission to adopt the more comprehensive approach proposed by the People.

### 2. The Companies' Residential Outreach and Education Program

The People remain concerned about the Companies' plan to pursue its non-cost-effective Residential Outreach and Education Program[11] and, likewise, question the Companies' purported efforts to pursue a joint program with ComEd who is offering a similar program in their service territory. As noted in the People's Initial Brief, combining efforts could significantly reduce the costs to both gas and electric ratepayers, potentially rendering the program cost-effective, and providing better service to customers. The Companies have expressed that a joint program would be "ideal," but they cite only to two purported barriers: merging data between the Companies and ComEd and ComEd's perceived unwillingness to enter into a joint program. NS/PGL IB at 16.

First, as noted in their Initial Brief, it appears to the People that the Companies have overstated their claims about potential information technology issues. AG witness Mr. Mosenthal testified that there is no need to actually merge CIS systems or to encumber the systems that the utilities rely on and rightly want to protect the integrity of. Despite not being an information technology expert, as discussed in greater detail in the People's Initial Brief, Mr. Mosenthal has worked through a similar experience in Vermont. AG IB at 16-17; AG Ex. 2.0 at 28. Based on his experience, merging the data could be accomplished via a program that should work in such a way as to allow the vendor already merges utilities' CIS data extracts with other public databases such as property tax and census databases, to establish things such as the size of the home and number of occupants. *Id.* In fact, in Vermont over a decade ago, data from 22 different utility systems were uploaded in an efficient manner to extract the necessary data and is updated monthly. The Companies did not address this testimony in their Initial Brief and the record does not support their assertions that a joint program would not be technically feasible. Therefore, the Commission should disregard the Companies' unsupported argument.

Secondly, the Companies attempt to shift the blame to ComEd, stating that ComEd had no interest in developing a joint program. While this may have been true several years ago, the Companies acknowledge that they have not reached out to ComEd since during the development of the Companies' Plan 1. Tr. at 27. The ratepayer savings and potential synergies that could result from a joint program demand that the Companies re-engage ComEd in discussions and the Commission, if it approves the Residential Outreach and Education Program, should order the Companies to work with ComEd on developing a joint program.

The parties to this docket all seem to agree on the general principle that pursuing measures or programs that are not cost-effective is generally not in the ratepayers' interest

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[10] See, *generally*, CUB Ex. 1.0 at 7-12; CUB Ex. 2.0 at 3-12.
[11] AG Ex. 1.0 at 18-19.

"unless there is a compelling reason." The Companies also agree to review non-cost-effective measures and may make changes to their Compliance Filing. NS/PGL IB at 23. While the People generally support this proposition, as discussed further in the Cost-Effectiveness section of this brief, the Companies have not yet provided a "compelling reason" to promote the Residential Outreach and Education Program if it is not projected to be cost-effective.

Based on the arguments presented in their Briefs, the People urge the Commission to direct the Companies to either eliminate the Residential Outreach and Education program from their portfolio or merge it with the existing ComEd program in a cost-effective fashion.

### B. Business Programs

#### 1. Commercial & Industrial ("C&I") New Construction Projects

In their Initial Brief, the People noted that the Companies propose a Business Existing Facilities program and a Small Business Efficiency program limited to existing facilities and raised concerns that the lack of services offered to businesses undergoing new construction projects was an important "lost opportunity." AG IB at 18; AG Ex. 1.0 at 11. The Companies acquiesced somewhat and noted that they would offer the Business and Small Business Program offerings to new business customers "as long those offerings occur early in the customer's planning of its new construction." NS/PGL IB at 22. The Companies also noted that they would attempt to coordinate with ComEd where possible. NS/PGL IB at 22.

The People appreciate the Companies' stated commitment to offering programs early on in the construction process. However, this commitment must be translated into action. The Companies' Plan 2 still lacks basic information as to how the Companies will go about actually marketing these services or aggressively helping to identify and promote efficiency opportunities in this important market segment. AG IB at 18-19. Therefore, the People urge the Commission to direct the Companies to submit a modified Plan that provides greater detail as to the marketing of the program. At a minimum, the Commission should enter an Order that solidifies the Companies' stated commitment and ensures that new construction opportunities for efficiency investment are available to the Business customer class.

#### 2. Business Existing Facilities Program

The People noted the concerns of AG witness Mosenthal related to the design of the Companies' Business Existing Facilities program, one of two programs that also include a Small Business Efficiency program. He took issue with the Companies' proposal for a direct installation path for the Business Existing Facilities program designed for the larger customers. He testified that in his experience this approach is very unusual. *Id.* at 13. Typically, direct installation services are offered for small customers because they have greater barriers, and lack the resources and sophistication to effectively self-direct efficiency installations. *Id.* They also tend to have a limited number of efficiency opportunities that are fairly standard and common across most buildings. *Id.* Larger customers, however, generally have the largest efficiency opportunities among more site-specific efficiency measures, and have greater resources (both technical, time, and financial) to fully engage in more traditional program models. *Id.* The direct installation plans the Companies are proposing are only very limited low-cost measures, and overall account for just 6% of the total program savings. *Id.* However, these services can be very expensive and, given the limited budgets, seem inappropriate for these larger customers. *Id.* He noted that the Companies actually project higher per unit savings from the small direct install measures than they do from the larger customer direct installation component. *Id.* at 13-14. He viewed this approach as counterintuitive and further evidence that the larger direct installation strategy should be reconsidered.

In response to the AG's stated concern, NS-PGL witness Marks testified that the Companies agree this practice is inconsistent and stated that they will offer what amounts to a retro-fit program that includes a multi-prong approach of Direct Install, Engineering Assistance, Standard Incentives, Custom Incentives and Gas Optimization measures. NS-PGL Ex. 3.0 at 16; NS-PGL Ex. 1.2 at 52. The People are satisfied with this approach and urge its adoption.

### 3. Small Business Direct Installation Program

According to the People, there remains an issue with the Companies' omission of programmable thermostats as one of the direct install measures for the Small Business direct installation program. AG Ex. 1.0 at 14. Currently, the small direct installation program only includes four measures: bathroom aerator, kitchen aerator, showerheads, and pre-rinse sprayer (the latter is only relevant where commercial dishwashing is occurring, such as restaurants). These are fairly limited measures. Programmable thermostats offer far higher savings than any of these other measures, and are easily installed during a direct contractor visit. Also, larger buildings are much more likely to already have programmable thermostats, or even centralized computer controlled HVAC systems, he testified. Adoptions of this measure would be higher if it was included in the direct installation path. *Id.* He further recommended that the Small Business program add pipe insulation and boiler reset controls, in addition to the programmable thermostats – all measures that should be widely applicable and installed by an on-site technician. *Id.* at 14-15.

In response to these suggestions, the Companies appear to have only offered to add the programmable thermostats to this Business program in its modified Plan filing, as noted in the AG Initial Brief. NS-PGL Ex. 3.0 at 18; AG IB at 21-22. The Companies, however, were silent on the inclusion of the additional measures to be included as recommended by Mr. Mosenthal. The Companies likewise did not raise the issue in their Brief. NS/PGL IB at 22. No other party challenged Mr. Mosenthal's recommendation.

Thus, in order to ensure a robust, cost-effective Small Business Direct Install program, the Commission should order the Companies to include both the programmable thermostat and the other measures recommended by Mr. Mosenthal to ensure that the small direct installation program includes a comprehensive offering of efficiency measures for the Small Business program customers.

## C. Cost-Effectiveness Analysis

As noted by the People in their Briefs, both Section 8-104 and prior Commission orders make clear that cost-efficiency should be measured on the total portfolio level, rather than require that every single measure being offered in a Plan pass the TRC. *See* 220 ILCS 5/8-104(f) (the utility shall "[d]emonstrate that its *overall* portfolio of energy efficiency and demand-response measures, not including (low-income) programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.") (emphasis added); ICC Docket 10-0564, Order of May 24, 2012 at 92; ICC Docket No. 07-0539, Order of February 6, 2008 at 21; ICC Docket No. 10-0568, Order of December 21, 2012 at 30; ICC Docket No. 11-0341, Order of October 2, 2013 at 49.

That being said, AG witness Mosenthal testified that a program administrator should not be heavily promoting measures that are non-cost-effective unless there is some other reason to promote them. Those reasons might include, but are not limited to: promotion of an immature technology that is expected to become cost-effective through greater promotion and increased volume of sales over time or through technological advancement; promotion of ancillary measures that, while not cost-effective on their own, can help to facilitate customer and trade ally participation, increase overall efficiency comprehensiveness, or in some other way enable greater efficiency to be captured that is overall cost-effective; ancillary measures that may be important to install with other cost-effective measures for non-efficiency reasons (such as mechanical ventilation when air sealing homes); measures that are generally cost-effective but not in all instances (e.g., more efficient lights in a low use space when retrofitting other lights in a facility). AG Ex. 1.0 at 16.

### 1. The Companies' Revised Filing Should Include Cost-effectiveness Analysis of Both Gas and Electric Savings for all Measures – Not Just Jointly Offered Programs.

At page 37 of their Brief, the Companies state that they "agree to include the electric and gas costs and benefits in its TRC calculations for the programs that are jointly implemented between the Utilities and ComEd." NS/PGL IB at 37. Conspicuously absent from this declaration is any mention of performing the same analysis for *all* of its proposed measures, not just those offered jointly with ComEd. This should be performed for a couple of reasons.

First, Section 8-104(f)(5) specifically requires the Company to perform such an analysis. That is the case because that provision references analyzing cost-effectiveness based upon the total resource cost test ("TRC"). Section 8-104(b) states:

> The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, *including avoided electric utility costs,* to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases.

220 ILCS 5/8-104(b) (emphasis added). No distinction is made in the statute between joint or gas-only measures for purposes of assessing cost-effectiveness.

Second, failure to assess the electric savings that are triggered in a gas-only measure may be the difference between a program being declared cost-effective or not cost-effective. As AG witness Mosenthal noted in his Rebuttal testimony, many standalone gas efficiency measures have electric impacts even when done as a non-joint effort. In these cases, it is important to understand the true cost-effectiveness of these gas measures. AG Ex. 2.0 at 20.

For example, the Companies are proposing to promote a number of gas measures that are not cost-effective, but that will provide some electric benefits that might make them cost-effective had they included them. These include furnace and boiler tune-ups, wherein electric power to run burner motors, blowers, and pumps can provide additional benefit and perhaps make these measures cost-effective. It is also certainly the case with air sealing measures, as noted above. If, as Mr. Marks suggests, these are being offered as part of a joint program where ComEd is paying part of the costs of these gas measures, we do not know what portion of the stated incentive costs for these measures the Companies are proposing will be covered by its ratepayers. While the Companies indicate that all costs are shared, they also provide explicit incentive levels for gas only measures, with the implication that these are borne only by gas ratepayers. Without full information on the electric side we are left with a very unclear picture of what the actual incentives and ratepayer costs are. *Id.*

For example, for the Business Existing Facilities Program (one of the largest contributors to overall energy savings), the Companies state "it is the intent of the Companies *to cooperate* in the offering of this program with ComEd. Measures that could benefit both gas and electric energy use *may be offered jointly, where possible***.**"[Emphasis added][12] AG Ex. 2.0 at 21-22. Similarly, for the Residential Single Family Program, the Companies say "it is the intent of the Companies and ComEd *to cooperate* in the offering of this program. There are *some measures that could benefit* both the gas and electric energy use."[Emphasis added].[13] Finally, the Residential Outreach and Education Program is a gas-only program. However, Mr. Mosenthal noted that it seems highly likely that as a result of receiving this broad based efficiency education some electric impacts will result from this program as well that should have been quantified. *Id.* at 22.

While Mr. Marks indicates costs are allocated based on benefits, it is unlikely this is fully the case for all costs in all joint programs, and seems to be inconsistent with the Plan language. Further, it is not clear this would be in the interests of ratepayers in all cases. However, without seeing these numbers, one cannot form an opinion on them. For example, will ComEd ratepayers cover a portion of the salaries and overhead of the Companies' staff based on its portion of benefits from the program as a whole? And if so, what is this share and how can the Commission ensure the Companies' proposed costs are reasonable if they can only see a fraction of the actual costs?

Similarly, will ComEd ratepayers fund prescriptive incentives paid for gas measures that have no electric impacts at all? In fact, the Companies' Plan contradicts this claim and makes it clear that actual cost allocations are not yet determined. For example, under their proposed joint Multifamily Program, the Companies state "the utilities will determine a framework for cost allocations based on savings/benefits to each utility's customers."[14] Clearly, this allocation has not yet been determined, and this statement is also ambiguous as to whether allocations will be

[12] NS/PGL Ex. 1.2 at 52.

[13] NS/PGL Ex. 1.2 at 33.

[14] NS/PGL Ex. 1.2 (Companies' Second Triennial Energy Efficiency Plan) at 40.

based on savings or benefits. This language is similar for most of the Companies proposed joint programs.

Further, the Companies detail specific incentives they will pay for all specific gas measures in their Plan 2. Is the Commission to believe that ratepayers will only have to cover a fraction of these incentives, but will also have to pay for other electric incentives the Companies are not declaring to the Commission? If this is the case, the Companies need to be clear exactly how much of these incentives will be paid by its ratepayers, and how much will be contributed by ComEd ratepayers. Again, the Commission's Order should require ComEd to provide such details in its revised filing.

For all of these reasons, the Commission should require the Companies to fully analyze all costs and benefits related to both gas and electricity for *all of its measures*, not just jointly offered programs, and report how they propose to allocate all costs between their ratepayers and ComEd, in an updated Plan.

### 2. Cost-effective Analysis of Particular Programs

In their Initial Brief, the People pointed out the Companies' reliance upon several non-cost-effective measures without discussion or justification for their offering. As an example, the People highlighted specific non-cost-effective measures within the Residential Single Family program, particularly furnaces and boilers that are being promoted with substantial participation by the Companies but are failing the TRC test.[15] AG IB at 23; AG Ex. 1.0 at 17. The People also noted that six PGL and four NS measures in the Residential Multifamily program fail the TRC test.[16] *Id.*

As to the Residential Education and Outreach program, neither of the two paths pass the TRC. The first component, a home energy report program to encourage customers to conserve and to take efficiency actions, represents the largest share of this program's budget. AG Witness Mosenthal reviewed the Companies' workpapers and noted that the TRC benefit-cost ratios for this home energy report program are 0.83 and 0.85 for PGL and NS, respectively. It is therefore unclear why the Companies are pursuing this program at all, when the entire program path is not cost-effective. In addition, any potential savings from this program are short-lived and only exist for one year. AG IB at 17; AG Ex. 2.0 at 29. In addition, as noted by the People, programs of this type require few resources to start-up and could be started at some point in the future in the event that it does become cost-effective. AG IB at 17.

In their Initial Brief, the Companies appear to defend only the Residential Outreach paths, raising an argument that there are, indeed, compelling reasons to pursue this program. NS/PGL IB at 19-20. The People, however, have already addressed the Companies' purported compelling reasons. The program is driven by a single vendor hired by the utility, and therefore does not impact issues around transforming markets and maintaining consistency or relationships with market-based vendors. In terms of equity, while this program can target a relatively large number of homeowners, it is an "opt-out" program, which means that the Companies choose

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[15] In particular, the People noted that the PGL measure with the largest participation (outside of the direct installation measures) is "Furnace >95% AFUE, <225MBH" which only has a benefit-cost ratio of 0.9. NS/PGL Plan 2 at 48. Mr. Mosenthal's analysis revealed several other furnaces and boilers that failed the TRC test. AG Ex. 1.0 at 17.

[16] The People noted in their Initial Brief, for example, the TAPI Furnace Tune-Up which *only has a benefit-cost ratio of 0.29* and the Furnace Tune-Up (the next highest measure mentioned above) *with a benefit-cost ratio of only 0.19*. *See* AG IB at 23-24, citing NS/PGL Plan 2 at 48.

which customers are included in the program without customer input. AG IB at 18; AG Ex. 2.0 at 29. Therefore, including this program does nothing to ensure that all customers are provided opportunities to participate in programs. Also, because this program tends to target the highest users, these are all likely to have gas space heating and can participate in other programs that can address things like improved building shell measures. AG IB at 18; AG Ex. 2.0 at 29-30.

As previously noted by the People and as discussed in the Residential program section of this brief, the Residential Outreach and Education should ideally be offered as a combined program in order to provide better customer service and also generate significant economies of scale. AG IB at 24. The primary costs of delivering this program are the costs of printing and mailing the home energy reports. Therefore, combining reports would provide substantial economies of scale. The Companies indicate that at this time their vendor cannot integrate the Companies gas reports with the electric reports administered by ComEd and the IPA.[17] However, the Companies have confirmed that OPower is their vendor for this program. AG Ex. 1.0 at 17. Opower is also the vendor for the same program in Ameren Illinois Company territory, and Ameren has proposed a combined gas-electric program. The Companies have not sufficiently explained why this same vendor can effectively integrate gas and electric reports for Ameren, but cannot do this for ComEd and the Companies. The Companies have also not outlined what efforts they have taken to overcome this limitation. The People note that this program borders on being cost-effective. If the Companies could combine the gas and electric components offered through the ComEd Behavioral program, Mr. Mosenthal believes that it would pass the TRC test. AG IB at 25; AG Ex. 1.0 at 18. The Commission should order the Companies to explore this option with their vendor.

Finally, the People reiterate that, although the Companies detail specific incentives they will pay for all specific gas measures in their Plan 2, they have not allocated costs and benefits to ComEd for joint programs. The Companies' Initial Brief did nothing to explain this shortfall in the Plan (NS/PGL IB at 37), and the People maintain their position that the Companies need to be clear exactly how much of these incentives will be paid by its ratepayers and how much will be contributed by ComEd ratepayers.[18] AG IB at 25; AG Ex. 2.0 at 21. Similarly, as noted above, the Companies propose the Residential Outreach and Education Program as a gas-only program. However, it seems highly likely that, based on the broad-based efficiency education the Companies claim the customers will receive, some level of electric impacts will result from this program. These figures were never quantified. *Id.* As noted above, the Commission should order the Companies to do so.

For all of these reasons, the Commission should require the Companies to fully analyze all costs and benefits for all programs and report how they propose to allocate all costs between their ratepayers and ComEd, in an updated Plan.

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[17] Plan 2 at 48.

[18] The People raised the example of the Companies' Residential Single Family Program, in which the Companies say "it is the intent of the Companies and ComEd *to cooperate* in the offering of this program. There are *some measures that could benefit* both the gas and electric energy use."[Emphasis added]. NS/PGL Ex. 1.2 at 33. Similarly, under their proposed joint Multifamily Program, the Companies state "the utilities will determine a framework for cost allocations based on savings/benefits to each utility's customers."

### D. On-Bill Financing

The People, in their Initial Brief, commended the Companies for including On Bill Financing ("OBF") in their program in conjunction with their rebate programs, but urged the Commission to direct the Companies to provide further information. AG IB at 28. As with most of the energy efficiency plan dockets reviewed by the Commission, there are general concerns in this docket about reducing costs and meeting savings goals. The People expressed how OBF can be a significant tool for reducing costs. Specifically, given the statutorily imposed budget caps, OBF provides an effective means to leverage limited efficiency funding by ensuring that customers have access to financing for their portion of efficiency costs. AG IB at 28; AG Ex. 1.0 at 15.

Despite the undisputed potential benefits of this program, the Companies, unfortunately, continue to provide only the most limited information about it. *See* NS/PGL IB at 23; NS/PGL Ex. 1.0 at 27; NS/PGL Ex. 3.0 at 28-29; NS/PGL Plan at 4. When it comes to levels of funding, the Companies merely note that Section 19-140 of the Act (220 ILCS 5/19-140), "allow[s] up to $2.5 million in OBF loans at any time." NS/PGL IB at 23, citing to NS-PGL 3.0 at 28-29. The trouble with merely stating the statutory allowance is that the Commission, as well as Staff and the intervening parties to this docket, have no clear picture as to *what amount* the Companies are actually seeking to include in the program. As noted by the People in their Initial Brief, this raises a red flag because it remains questionable whether OBF will have *any impact* on the overall portfolio. AG IB at 28; AG Ex. 1.0 at 15. The Companies also note simply that "[t]he budget for loans is $2.5 million." NS/PGL IB at 23. Again, while this restates the statutory budget, it is not clear whether this will be the amount to be lent in each service territory, the source of the capital, or how many loans are anticipated over the three-year period. AG IB at 28; AG Ex. 1.0 at 15.

As previously noted by the People, the Companies are asking the Commission to approve goals that are significantly adjusted downward from the intended statutory goals articulated in Sections 8-103 and 8-104 of the Act as a result of budget limits. AG IB at 29. It follows that the Companies should be obligated to, minimally, *attempt* to maximize the savings that they can reasonably capture within these budget limits, subject to other policy objectives. OBF can provide a significant tool for the Companies to expand the goals they pursue within the budget limits. Therefore, the Commission should direct the Companies to submit a revised plan pursuant to Section 8-104(f) with more detail supporting its inclusion of OBF as a mechanism to reduce program costs.

## IV. PORTFOLIO FLEXIBILITY

### A. The Companies' Request for Unlimited Flexibility Creates Perverse Incentives For Achieving Energy Savings Goals and Should Be Denied.

The People, in their Initial Brief, noted that the Companies are essentially proposing unlimited flexibility to modify their Plan 2 provided they follow Staff's proposed reporting requirements. AG IB at 30. Despite the Companies' assertions that this is not a request for unfettered flexibility (see NS/PGL Ex. 3.0 at 19; NS/PGL Ex. 5.0 at 2-3), their request speaks otherwise - including "the latitude to reallocate funding between programs, to add or delete cost-effective measures, and increase or decrease incentive amounts, at their discretion." NS/PGL

Plan 2 at 29. Staff proposed a series of reporting requirements that attempt to hold the Companies accountable, but in fact do not protect ratepayers. *See* Staff IB at 11-12. Therefore, even if the Commission approves the Companies request and incorporates Staff's reporting requirements, the Companies will still have a unilateral ability to make changes to their plans as they see fit without any prior stakeholder or Commission approval.

In response to these proposals, the People offered an alternative whereby the Commission could adopt some limitations that would hold the Companies accountable for seeking approval for budget shifts of greater than 20 percent but grant wide discretion to the Companies to make changes as necessary below the 20 percent threshold. AG IB at 33. The People's alternative asks the Commission to establish limits on flexibility that *would not prevent* the Companies from exceeding them should they so choose, but rather, would trigger goal adjustments if any budget shifts result in a variance from planned annual program budgets of 20% or more. AG IB at 33-35; AG Ex. 1.0 at 23. The People's proposal also requires the Companies to report all planned changes to the SAG for comment and ideally to build consensus around the proposed change. AG Ex. 1.0 at 24. The AG proposal is not burdensome, would be transparent to all parties, and simply ensures that goals reflect the approximate plan being pursued. AG IB at 34. The People also note that this plan could also work in the Companies' favor if they are having success with an expensive program and wanted to shift funds into it from a cheaper program. AG IB at 35.

As discussed in greater detail in the People's Briefs, the Commission should not be swayed by the Companies' empty assurances that they are not seeking unlimited flexibility[19] when the record and reality clearly demonstrates the opposite. Moreover, the Companies *could* conceivably game the system in order to easily meet their goal simply by shifting from more expensive to less expensive programs. AG Ex. 1.0 at 21-22. The Companies are requesting "the latitude to reallocate funding between programs, to add or delete cost-effective measures, and increase or decrease incentive amounts, at their discretion." AG IB at 30, citing NS/PGL Plan 2 at 29. Staff' reporting requirements do nothing to check that ability; the Companies will still have a unilateral ability to make changes to their plans as they see fit without any prior stakeholder or Commission approval. It is for these reasons that the People once again urge the Commission to adopt their reasonable limitations to the Companies' flexibility.

The Companies persist in arguing that they are merely seeking to maintain the *status quo* as adopted in the Commission's approval of their Plan 1, and that there is no evidence that the Companies "misused" their previous level of flexibility. NS/PGL IB at 24-25. The Companies' argument misunderstands the point of the People's proposal. As noted by the People in their Initial Brief, Commission approval of the Companies' unlimited flexibility request would permit the Companies to effectively pursue a different and much cheaper plan than was actually approved by the Commission. AG IB at 30-31; AG Ex. 1.0 at 21-22; AG Ex. 2.0 at 3-4. To be clear, the People are not accusing the Companies of any actual or planned wrong-doing. AG IB at 36. However, if the Commission were to grant the Companies their requested flexibility to shift funds, the possibility remains that the Companies could virtually guarantee themselves easily met goals by simply shifting more resources to the cheapest programs, thus "gaming" the system. The Companies' requested flexibility may have been appropriate during the Companies' first Plan at a time when the cost caps of Section 8-104(d)[20] had not yet impacted program spending. AG IB at 32. However, given the current reality of the need for reduced goals given

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[19] See NS/PGL IB at 24-25.

[20] 220 ILCS 5/8-104(d).

the 2% cap on spending, allowing flexibility without limits provides the Companies with *the ability* to simply pursue a completely different plan than what was originally designed. Presumably, this could be in an effort to achieve cheaper savings by shifting from more expensive to less expensive programs. AG IB at 32; AG Ex. 2.0 at 3.

Essentially, the Companies' proposal amounts to a request to retain the ability to completely alter its pre-filed Plan. Some limitations and checks are necessary to ensure that the overall portfolio remains robust and diverse, and is not comprised of inexpensive measures that provide the cheapest means of achieving the modified savings goals. If the proposed delivery and allocation of programs is not followed, then the basis for approving the specific modified goals proposed is moot. AG IB at 31. Because the budget cap constraints now in place prevent the Companies from pursuing all cost-effective efficiency resources in each market, they have significantly more flexibility to ramp up the least expensive programs. AG IB at 31. Therefore, the reality is simply that the Companies *could* game the system in order to easily meet its goal simply by shifting from more expensive to less expensive programs. AG IB at 31-32.

### B. Staff's Proposed Reporting Requirements Do Not Solve the Problem of the NS/PGL-Proposed Unlimited Flexibility

The People urge the Commission to reject Staff's proposed reporting requirements because they are unnecessarily burdensome and simply create a false sense that regulators can effectively micromanage every utility decision in real time. AG IB at 31. In addition, Staff's recommended accountability measures also do not go far enough to prevent the situation that the People have previously described where the Companies could take advantage of an opportunity to shift ratepayer revenues in such a way as to swap out resources or otherwise "game the system." AG IB at 30-31. It should also be noted that CUB supports the People's proposal, noting that Staff's attempts to adopt the Commission's order in Mid-American Energy's Energy Efficiency docket is improper, because Mid-American is governed by a different portion of the Act. CUB IB at 15-16.

In further response to the Companies and Staff, the People noted that the Commission, in Docket No. 13-0495, found the AG's proposal unnecessary "because the Commission will be aware of large budget shifts through reports to the Commission, but also if indeed ComEd is abusing its discretion there is nothing to stop Staff or an Intervenor from bringing this to the Commission's attention." ICC Docket No. 13-0495, Order (January 28, 2014), at 56. As previously noted, AG witness Mosenthal cited to his experience and is of the opinion that trying to catch any undesirable changes and *then* challenge them is a poor use of regulatory resources. AG IB at 31-32; AG Ex. 2.0 at 4. That plan also invites unnecessary litigation of programs that the Commission has made clear must incorporate stakeholder input through the SAG process. It is also unrealistic that such a process could be effectively completed in real time. AG Ex. 2.0 at 4. The People presented an example wherein the Companies could choose to shift a large amount of spending from their most expensive program (Residential Single Family) to their cheapest program (Residential Outreach and Education).[21] Such a change could be completed within days and would later be reported to the Commission in a quarterly report. However, it

[21] The Residential Outreach and Education program costs approximately *one quarter as much per unit of savings*.

remains unclear what the remedy would be, or whether any remedy could be timely enough, in the event that Staff or any Intervenors disagreed with this decision.

The People's proposal, on the other hand, protects both the Companies and ratepayers by simply resetting goals to reflect the actual plan the Companies ultimately choose to pursue. This energy savings goals adjustment can be done after the fact, is not burdensome, would be transparent to all parties, and simply ensures that goals reflect the approximate plan being pursued. AG IB at 30-31. Further, because the AG proposal permits the Companies to shift up to 20% of a program budget with no energy savings goals adjustments, it still provides the Companies with a great deal of flexibility that would not even trigger any goal adjustments. The Companies would retain the needed flexibility to modify individual programs — for example adding or removing measures, adjusting incentives, changing marketing strategies, etc. — in order to respond quickly to market events or evaluation findings.

It also ensures that *all* decisions related to portfolio changes are discussed with the SAG. AG Ex. 1.0 at 24. The Companies should be ordered to first bring any proposed modifications to the SAG for discussion and ideally to build consensus around the change. This should happen whether or not the 20% limit is exceeded, but is particularly important for significant changes. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation. AG IB at 35.

To be clear, the People reiterate that they are not seeking to constrain the Companies from making the choices necessary to make to manage their portfolios. Rather, the People are simply recommending that the Commission establish *some limits* on flexibility. The proposed limits would not serve to prevent the Companies from exceeding them if they should so choose. Rather, the exceeding of a limit would trigger a goal adjustment in the event the Companies choose to exceed them.

For all of these reasons as well as those presented in the People's Initial Brief, the People urge the Commission to adopt the People's proposal to limit flexibility such that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments should be adopted by the Commission. Further, the Commission should enter an order that makes clear that utilities should continue to bring all proposed program shift proposals to the SAG for input and comment.

## V. EVALUATION, MEASUREMENT AND VERIFICATION

### A. The NTG Framework Recommended by the People Should Be Adopted

The People's NTG framework recommendation is rooted in ensuring that independent evaluators and the Companies are guided by the most up to date, accurate information available in the calculation of the ratio between free-ridership and spillover. AG IB at 36-41. That proposal, consistent with the Commission's order in ICC Docket No. 13-0498 (Ameren's three-year efficiency plan filing), would require evaluators to act as the final arbiter to decide any non-consensus values based on input received from the SAG. Evaluators would not be required to simply default to the latest individual utility evaluation result when consensus is not reached in

SAG meetings.[22] Under the AG approach, all Illinois evaluators would work together to agree on appropriate NTG values based on all the information before them, including prior evaluations, the discussions among the SAG and its experts, the specific program plans, and any other research or information that is available and relevant. AG Ex. 2.0 at 6-7. That value, modified and informed by the SAG discussion, would be the NTG value to be prospectively applied beginning June 1 of each program year. This approach, again, has been adopted by the Commission in Ameren Illinois Company's ("Ameren") three-year plan docket, Docket No. 13-0498:

> In order to provide additional certainty, which all parties advocate, prior to March 1 of each year, the independent evaluator will present its proposed NTG values for each program to the SAG. The purpose of this meeting will be for the independent evaluator to present its rationale for each value and provide the SAG, in their advisory role, with an opportunity to question, challenge and suggest modifications to the independent evaluator's values. The independent evaluator will then review this feedback and make the final determination of values to be used for the upcoming year. In all other respects, the NTG Framework adopted in Plan 2 should be utilized.

ICC Docket No. 13-0498, Order of January 28, 2014 at 123.

In their Brief, the Companies first suggest that (1) "[i]f no consensus is reached at the SAG, the EM&V contractor values should be used." NS/PGL IB at 31. In addition, however, the Utilities write:

> Prior to March 1 of each year, the EM&V contractor will present proposed NTG values to the SAG for discussion. The EM&V contractor, after advice from the SAG is considered, will adjust values as applicable and those final determined values by the EM&V contract will be used for the upcoming program year (beginning June 1).

*Id.* Finally, the Utilities indicate that "[t]he Utilities also do not oppose having Illinois utilities evaluators consider the best practices and results of other studies in the formation of a particular independent evaluator's results and making it applicable to the Utilities." *Id.*

While it would appear, then, that the Companies agree that the Commission's finding in Docket No. 13-0398 should be applied in this case as well, the Companies also state at page 32 of their Brief that the framework adopted in the Commission's order in Docket No. 13-0495, Commonwealth Edison's ("ComEd") proposed three-year efficiency plan filing, should be adopted here. That order, however, differed significantly from the Commission's Order in the Ameren docket, inexplicably. The People have sought rehearing on this point in the ComEd docket, 13-0495. That application is pending before the Commission, and is attached as Appendix A. However, no party has requested rehearing on the NTG framework approved in the Ameren docket, 13-0498. As noted in the AG Initial Brief, the framework approved in the

[22] While it is not explicit, it appears that the Companies' use of the term "evaluator value" implies a value that is taken from the latest single evaluation report for a utility program.

Ameren docket is the better process because, unlike the ComEd framework, the NTG value is informed by SAG discussions when no consensus exists. As the People noted in their Initial Brief, it is essential that the NTG annual process incorporate consensus development of values using the best available and most up-to-date information – not rote adoption of evaluations that may be several years old, which is the process approved in the ComEd order. Further, it is critical that a single NTG framework be established for all Illinois utilities and that consistent development of the values for each utility is achieved. AG Ex. 2.0 at 7. Again, the People have proposed to modify the ComEd process in their pending application for rehearing.

The bottom line is that it is important for the Commission to understand the distinction between allowing evaluators the flexibility to select what they view as the best estimate of future NTG values and to work collectively on all utility NTG values with the SAG and incorporating those viewpoints shared therein, rather than be constrained by a single prior utility-specific study. The Commission's NTG finding in the Docket 13-0498 Ameren Order allows for this, and the Commission should order that same process here. It should also be clear in the Commission's order that adequate time be provided by the utility evaluators to the SAG to attempt to reach consensus. *Id.* at 9.

### B. Both Spillover and Free Ridership Should Be Measured in NTG Analysis

In their Direct Testimony in this case, the Companies argued that "if an evaluation is unable to account for spillover, then the free rider effect should also be ignored." NS/PGL Ex. 1.0 at 23-24. As noted in the AG Initial Brief, *both* free ridership and spillover should apply to NTG ratio estimation, and the Commission's Order should confirm that spillover is a legitimate aspect of estimating NTG. AG Ex. 1.0 at 39. The Companies request to eliminate free ridership assessments when any study fails to explicitly estimate spillover is bad public policy, and inconsistent with the General Assembly's finding that "cost-effective" programs are to be offered to customers. 220 ILCS 5/8-104(a). AG IB at 42-43.

The Companies appear to have backed away from their original proposal in their Brief. Instead, the Companies urge the Commission to make the same finding on spillover and free ridership as found in Docket No. 13-0495, Commonwealth Edison's ("ComEd") proposed three-year efficiency plan filing. There the Commission held:

> **6. Commission Analysis and Conclusion**
>
> The Commission finds that excluding spillover from the NTG calculations is likely to unfairly reduce a program administrator's calculated savings, but because it can be costly to determine spillover, the Commission cannot at this time require that it always be included. Thus, the Commission directs evaluators to consider spillover while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.
>
> Staff's proposal to consider a program-wide spillover survey is worthwhile and can be taken to SAG for further development. The survey has the potential to provide a cost-efficient and more accurate measurement for accounting for spillover. The Commission notes that it would benefit all parties to determine the feasibility of such a survey in a timely fashion if the

> intent is, as Staff suggests, to conduct the first analysis over the course of this Plan 3.

Docket No. 13-0495, Order of December 18, 2013 at 101. In Docket No. 13-0498, Ameren Illinois Company's ("Ameren") proposed three-year efficiency filing, the Commission held:

> …the Commission, in keeping with the AG's recommendation, directs evaluators to consider spillover whenever possible while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

Docket No. 13-0498, Order of January 28, 2014 at 100. Both of these conclusions effectuate the same goal: ensuring that both spillover and free ridership is incorporated into NTG analysis. Staff likewise supports incorporation of both free ridership and spillover in NTG assessments. Staff IB at 14-19. The Commission should make an identical finding on this issue in this docket.

### C. The Companies' Request for an Adjustable Savings Goals Should Be Rejected

In their quest to remove any risk of non-achievement of the savings goals that will be approved by the Commission in this docket, the Utilities are proposing to adjustment savings goals based upon NTG ratios and realization rates that are subject to change on a prospective basis due to ongoing evaluation of the programs, updating the Illinois Technical Resource Manual or in accordance with the Illinois NTG framework. NS/PGL IB at 27. The Companies claim that "[w]ithout such an adjustable savings goal, outcomes could be unfair as exact participation rates could be achieved and yet goals may not be met." *Id.* They argue that adjustments would occur at the start of each program year. *Id.* at 28. This request should be denied for several reasons.

First, the Companies proposal is contrary to Section 8-104(i) of the Act. As noted in the AG Initial Brief, in order to ensure the cost-effective delivery of energy efficiency programs, the General Assembly emphasized that Utilities must manage their portfolios and ensure maximum savings goals are achieved during the three-year Plan period. This is made clear in Section 8-104(i), wherein specific monetary penalties are assessed against the utilities for failure to achieve the statutory savings goals. The only caveat to this mandate is a reference to subsection (d), which limits the amount that can be spent on efficiency programs to no more than 2% in the applicable three-year reporting period. 220 ILCS 5/8-104(d)[23]. *Importantly, no reference is included in this subsection of the Act to permit the Utilities to modify either the annual statutory savings goal or the Commission-approved (modified) savings goal for changes in NTG and Technical Resource Manual ("TRM") values.*

Second, as noted by AG witness Mosenthal, NTG values can be highly influenced by program administrators, and this would remove any incentive for utilities to strive for higher NTG values (to improve cost-effectiveness) and to make appropriate program changes when NTG values are becoming increasingly low. AG Ex. 1.0 at 35. For example, the utility would

[23] For purposes of calculating a cost cap, as defined in sections 8-103(d) and 8-104(d), the total amount paid for electric and gas service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes. *Id.*

be indifferent if evaluators determined that a program was no longer cost-effective (or had significantly decreased in cost-effectiveness) and an assumed NTG value dropped precipitously, because its goals would simply be adjusted to accommodate this change. *Id.* As such, knowing that their goals will be adjusted downward, the Utilities will have lost all incentive to make the necessary program changes to ensure that they are delivering truly cost-effective programs to their customers.

Instead, the utility should have a clear incentive to forecast likely NTG results and make program changes as necessary to ensure they are not expending resources inappropriately on things that are largely transformed in the market already. For example, the utility could raise efficiency eligibility requirements, perhaps modify incentives, consider targeted approaches to reach non-free riders, or perhaps discontinue promotion of the program or measure altogether. *Id.* But why would a utility engage in these necessary changes if failure to do so would carry no consequences? The Commission should reject such a policy for these obvious reasons.

Third, permitting adjustments to program savings goals based upon annual changes to TRM values is similarly improper. The TRM, as adopted by the Commission in Docket Nos. 12-0568 and 13-0077, is a living document that is updated annually to ensure that all utility program evaluations apply the same values to the calculation of cost-effectiveness, and to modify any values for which there is new and better information, or to even to add new measures. *Id.* at 36. The TRM and TRM policy dockets[24] were established, and procedures agreed to, to ensure a timely update process whereby program administrators will know any TRM changes by March 1 of each year, 90 days prior to the beginning of the next program year and use of the next TRM version. This allows utilities the opportunity to modify plans, shift promotions of measures, and incentive levels as they see fit to manage these known and certain changes. Again, if the Companies simply are allowed to adjust goals whenever the TRM changes, they have no incentive to make appropriate midcourse corrections. For example, if the TRM determined that a measure was saving very little and no longer cost-effective, the utility could still simply pursue that measure and get full credit for goals based on the number of measures rebated, even when this is no longer in ratepayers' interest. It is important that the utilities be held to an overall goal and are incented to make appropriate and needed annual adjustments to ensure prudent programs. Because the portfolio is diverse and includes numerous programs and measures, there is plenty of opportunity for utilities to make these appropriate adjustments and accommodate TRM changes annually, similar to the timeline. *Id.* Modifying savings goals to reduce the risk of not achieving approved goals based on these updates simply is not needed. *Id.* at 36.

Fourth, there are practical problems with permitting the Utilities' "set-it-and-forget-it" approach to efficiency program management. AG witness Mosenthal noted that such an approach would be administratively burdensome and impractical. AG Ex. 1.0 at 37. He explained that the TRM literally contains hundreds of measures and thousands of individual assumptions. The process of maintaining and revising it already consumes significant SAG resources. If every change in a TRM had to be translated into explicit goal adjustments this would result in constantly moving targets, require extensive administrative effort, and significantly reduce the transparency of goals. It would be very difficult for SAG parties to follow and understand how goal adjustments were made and whether they were appropriate. *Id.*

In addition, even if one was willing to absorb these extensive administrative burdens, it is still unclear exactly how the requested savings goal adjustment would be done. For example,

[24] Docket Nos. 12-0568 and 13-0077.

annual updates of the TRM can include adding new measures being promoted that were not in the latest version. While this is clearly a TRM change, it is unclear how this would translate into goal adjustments when no original TRM value existed. *Id.*

The Utilities argue that "there is no evidence that the Utilities are not committed to energy efficiency programs or abuse their discretion in administering programs." NS/PGL IB at 28. This is a hollow argument. It is debatable as to whether the Companies have evidenced a "commitment" to efficiency to date. Moreover, one could argue that if NS/PGL is truly committed to efficiency as they claim, they would be proposing efficiency policies that ensure *ratepayer value,* rather than shareholder value. Regardless, how NS/PGL has behaved in the past is irrelevant to whether creating adjustable goals is good public policy going forward. It is not.

The Companies also argue that their pay-for-performance contract with their primary efficiency vendor, Franklin Energy, will ensure appropriate program performance. Again, however, this is irrelevant to ensuring best practices in terms of necessary program adjustments – particularly when the savings goals that Franklin will contract to achieve can continually be adjusted downward. The Companies have not detailed exact contract terms with Franklin. The Companies have not specifically claimed that payment rests on achieving the goals established by the Commission in this docket. Moreover, the Companies have simply shifted the responsibility for achieving goals to a third part administrator. That again raises the question of commitment to efficiency.

The Company further argues that program flexibility alone is not enough to guard against unanticipated lost energy savings in a particular program. NS/PGL IB at 29. This argument too is defective. The Company retains the ability to shift program dollars away from programs with declining cost-effectiveness ratios into other program that are succeeding in terms of cost-effectiveness. Again, creating a savings goal moving target, as the Companies request, is simply not needed.

The Companies highlight the fact that Staff supports their movable target proposal. But, as noted in the AG IB, that concurrence is inexplicable. Staff witness Hinman, herself, admitted that the request amounts to a "set-it-and-forget-it" approach to portfolio management. Staff Ex. 1.0 at 25. Staff, in its Brief, suggests that their request for increased and quarterly reporting will discourage imprudent practices. What Staff does not explain is how filing a report evidences a commitment to making the necessary adjustments to programs to ensure best practices and maximum cost- effectiveness. *See* Staff IB at 31. Staff only states that changes to NTG and TRM values should "drive implementation adjustments", and that "the Companies should continue to prudently manage the portfolios and adjust funds during a program year in a manner that seeks to increase net savings beyond the modified savings goal and maximize net benefits for ratepayers." *Id.* That's a well-meaning statement, but saying it does not make it so. The statement also lacks enforcement. Staff never states what it or intervenors can or should do if they are dissatisfied with a report. Presumably, a disgruntled stakeholder or Staff would need to seek the initiation of a Commission docket in order to ensure best practices are maintained.

In short, requiring a utility to simply file reports does not ensure the Companies are appropriately shifting program dollars and modifying practices based on adjustments to NTG and TRM changes – particularly when you have removed any incentive for them to do so. Staff's proposal also sets up the likelihood of increased litigation. It is up to the Commission to ensure through this Order that the Utilities are incited to ensure best practices in program management. And the way to accomplish that is to reject the Companies' proposal for adjustable savings goals.

The Utilities also argue that Section 8-104(f)(7), which only allows prudent and reasonable expenses to be recovered from ratepayers, is incentive enough to spend prudently. Here again, the Companies miss the point. That provision is *not* enough to ensure that the Companies make the necessary modifications to programs that are needed, such as discontinuing a program or tweaking it in ways to make it more cost-effective, to ensure the maximum delivery of cost-effective programs. Moreover, cost-effectiveness is evaluated based on the overall portfolio – not based on individual programs.

Again, as noted in the AG Initial Brief, the Act explicitly established performance targets and penalties to utilities for failure to meet these energy savings performance targets. Clearly the legislature intended for the utilities to absorb some performance risk or they would not have included these penalty provisions. Currently, no utility is operating a program with such adjustable savings goals. That precedent should be retained going forward. As Mr. Mosenthal reminded the Commission, the utilities are using the ratepayers' money to implement programs *for ratepayers.* That's an important point that should not be lost in this discussion. The utilities must have some accountability to ensure that they perform this statutory duty *on behalf of ratepayers* – not for the protection of shareholders -- in a prudent way, and in a way that maximizes energy savings while providing net benefits to the ratepayers.

## VI. THE STAKEHOLDER ADVISORY GROUP ("SAG") AND PROPOSED ENERGY EFFICIENCY POLICY MANUAL

The People, in their Initial Brief, urged the Commission to specifically direct the Companies to continue participating with the SAG, particularly on some key items outlined in the People's Initial Brief, and to work with the SAG on developing an Illinois Energy Efficiency Policy Manual. AG IB at 55-57. The Commission previously approved the creation of a policy manual[25] and the parties appear to be in agreement that such a manual should be ordered in this docket, subject to some considerations. *See* Staff IB at 28; Staff Ex. 3.0 at 14-15; NS/PGL Ex. 3.0 at 27.

Companies' witness Marks urges the Commission to recognize the Companies' "unique differences" due to their programs, designs, budgets, and service territory. NS/PGL Ex. 3.0 at 27. In response, the People noted their belief that the Commission has already addressed such concerns in the Ameren efficiency proceeding, Docket No. 13-0498, wherein the Commission concluded that the AG proposal already addressed the utility's concern about "unique differences" among utility programs:

> The Commission believes that the AG's clarified proposal is specific, addresses an inconsistency between utilities in Illinois that may warrant attention, and is reasonable. As a result, to the extent possible, the Commission directs the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

[25] ICC Docket No. 13-0498, Order (January 28, 2014), at 129; ICC Docket No. 13-0495, Order (January 28, 2014), at 130.

Docket No. 13-0498, Order of January 28, 2014 at 129. The same language should be included in the order for this docket, with specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

Staff encourages the Commission to limit the scope to create a consensus-based manual focused on "evaluation-related issues" with no discussion of prudence or program implementation. Staff IB at 28; Staff Ex. 3.0 at 14. The People addressed Staff's arguments in their testimony and Initial Brief (AG IB at 55-57; AG Ex. 1.0 at 42-43) and specifically note that despite Staff's interpretation of the order in the ComEd Energy Efficiency Docket (13-0495), the Commission did not specifically constrain the SAG from exploring topics outside of evaluation-related issues in that docket. Rather, the Commission adopted the AG's proposal, specifically designed to ensure consistency in terms of monitoring savings achieved and evaluating programs:

> The Commission believes that the AG's clarified proposal is specific, addresses an inconsistency between utilities in Illinois that may warrant attention, and is reasonable. As a result, to the extent possible, the Commission directs the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

Docket No. 13-0495, Order of January 28, 2014 at 130; *see* AG IB at 57. The People are not seeking to further burden the SAG or create additional work that further constrains already limited resources. Rather, the People seek to create a manual that is designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission. Such a manual, for example, could provide a common definition of administrative costs so that each utility is defining these costs in a consistent manner and will help ensure that programs are delivered and evaluated based on the same foundational assumptions. AG Ex. 1.0 at 43.

The People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

## VII. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter an order consistent with the recommendations made in the People's Initial and Reply briefs, as well as this Statement of Position.

Respectfully submitted,

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